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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,939	10/16/2003	Kevin P. McGrath	KCX-666 (19290)	4578

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DORITY & MANNING, P.A.  
POST OFFICE BOX 1449  
GREENVILLE, SC 29602-1449

EXAMINER
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GEORGE, KONATA M

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



### **DETAILED ACTION**

Claims 1-74 are pending in this application.

#### ***Restriction Requirement***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-24 and 52-74, drawn to a method of reducing odor with a substrate and a substrate comprising the odor control composition, classified in class 428, subclass 98.
- II. Claims 25-51, drawn to odor control composition and a method for reducing odor, classified in class 424, subclass 489.

The inventions are independent or distinct, each from the other because:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because combination can be directed to a composition having any form i.e. a solution, spray, deodorant stick, etc. The subcombination has separate utility such as a cloth impregnated with an odor control composition.

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Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

A telephone call was made to Christina Mangelson on August 28, 2006 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Lastly, not that *In re Ochiai*, 71 F.3d 1565, 37 USPQ2d 1127 (Fed. Cir. 1995) and *In re Brouwer*, 77 F.3d 422, 37 USPQ2d 1663 (Fed. Cir. 1996) addressed the issue of whether an otherwise conventional process could be patented if it were limited to making or using a non-obvious product.

In situations where the product and process claims are drawn to independent and distinct inventions are present in the same application, an applicant may be called upon under 35 U.S.C. §121 to elect claims to either the product or process. The claims to the non-elected invention will be withdrawn from further consideration. However, in the case of an elected product claim, when a product claim is found allowable, withdrawn process claims which depend from or otherwise include all the limitations of an allowable product claim will be rejoined.

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Withdrawn process claims not commensurate in scope with an allowable product will not be rejoined. In the event of rejoinder, the rejoined process claims will be fully examined for patentability. If the application containing the rejoined claims is not in condition for allowance, the subsequent Office action may be made final, or, if the application was under final rejection, the next Office action may be an advisory action.

### ***Conclusion***

Claims 1-74 are under restriction requirement.

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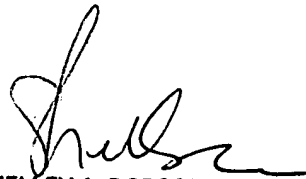
***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is 571-272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, can be reached at 571-272-0646. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have question on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Konata M. George  
Patent Examiner  
Technology Center 1600

  
SHELLEY A. DODSON  
PRIMARY EXAMINER